

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

ROSLYN COOK-DEYAMPERT,
and GENEVA BROWN,

Plaintiffs,

vs.

ALABAMA DEPARTMENT OF
TRANSPORTATION, et al.,

Defendants.

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Civil Action Number
7:03-cv-3132-UWC

MEMORANDUM OPINION AND ORDER
GRANTING PLAINTIFFS' MOTION TO STRIKE
and
DENYING DEFENDANTS' MOTION FOR LEAVE TO AMEND

The Scheduling Order, which was proposed to the Court by the parties, provides that the Defendants were allowed until October, 1, 2004, to add defenses and amend the pleadings. (Doc. 10.)

On August 16, 2004, Plaintiffs filed a Second Amended Complaint. (Doc. 15). Under the Federal Rules of Civil Procedure, Defendants were required to answer the Second Amended Complaint within ten days,¹ which was well within

¹See F.R.Civ.P. (Rule) 15 (a) .

the deadline for adding defenses and amending the pleadings. The Defendants had neither answered the Second Amended nor sought to amend their pleadings when the court-ordered deadline expired on October 1, 2004.

Over a year after the deadline expired, and three weeks after the discovery deadline had expired, the Defendants file on December 5, 2005, and amended Answer to the Second Amended Complaint (Doc. 26), in which they denied the material allegations of the said complaint and asserted, for the first time, numerous affirmative defenses.

The Plaintiffs filed a Motion to Strike the Amended Answer. (Doc. 28.) The Defendants responded in opposition to the motion; and moved in the alternative for leave to file the amended Answer. (Doc. 4.)

It is hornbook law that affirmative defenses must be specifically pled; otherwise, they are waived. Rule 8 (c). *See Steger v. Gen. Elec. Co.*, 318 F.3d 1066, 1077 (11th Cir. 2003); WRIGHT AND MILLER, 5 Fed Prac. & Proc. 3d § 1278.

It follows that the Defendants have waived any affirmative defenses they may have had to the Plaintiffs' Second Amended Complaint. Inasmuch as the Defendants have failed to show good cause for their failure to timely assert the affirmative defenses, their arguments against waiver are unavailing. *See*

F.R.Civ.P. 16(b); *Sosa v. Airprint Systems, Inc.*, 133 F.3d 1417, 1419 (11th Cir. 1998).

The Defendants' alternative untimely motion for leave to amend is due to be denied. The granting of the motion would entail a new round of discovery, for the Plaintiffs clearly would be entitled to discovery on the affirmative defenses; and the new round of discovery would unnecessarily delay the trial of this action.

The Plaintiffs' Motion to Strike is hereby GRANTED; and the Defendants' alternative Motion For Leave to File Answer to Second Amended Complaint is hereby DENIED.

Done the 27th day of January, 2006.

A handwritten signature in black ink, appearing to read "U.W. Clemon", written in a cursive style.

U.W. Clemon
Chief United States District Judge